

JAN 10 2001

TIMOTHY R. WALBRIDGE, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

wherein the Bankruptcy Court recommended that this Court decline to withdraw the reference of the proceeding because Defendant Jay L. Jones waived his right to jury trial by asserting a setoff defense against the estate in his answer to CFS's complaint.

On May 25, 2000, the Bartmanns filed their Answer to CFS's Complaint, asserting that:

Defendants are entitled to indemnification and setoff of any amounts allegedly owed by Defendants to Plaintiff as a result of damages they have and will incur, including attorneys' fees and costs, resulting from the filing of various securities related lawsuits currently pending in the United States District Court for the Northern District of Oklahoma, and in Tulsa County District Court for the State of Oklahoma.

Def. Answer at 6.

On July 29, 2000, in response to the Bartmanns answer filed in this Court, CFS filed in the adversary proceeding a motion a motion to strike jury demand and to reconsider the [Bankruptcy] Court's memorandum opinion and recommendation regarding the Bartmanns' motion to withdraw the reference.

On July 26, 2000, this Court entered its Order Regarding Motion to Withdraw Reference, in which the Court determined that it would:

[H]old in abeyance any ruling on the Motion to Withdraw Reference filed herein in order to provide the Bankruptcy Court appropriate time to consider the Motion to Strike and whether a supplemental report and recommendation is appropriate in light of the subsequent filing of the Motion to Strike[, and] . . . the Court will further consider the Motion to Withdraw Reference at a time after the Bankruptcy Court enters supplemental report and recommendation on the Motion to Withdraw Reference.

Dist. Ct. Order at 2.

Also on July 26, 2000, the Court entered an order in Commercial Financial Servs., Inc. v. Jay L. Jones adopting the recommendation of the Bankruptcy Court and denying Defendant Jones' motion to withdraw reference wherein the Court found that Jones' assertion of setoff as an affirmative defense in his answer constituted a claim against the estate and therefore a waiver of Jones' right to a jury trial and subjecting him to the equitable jurisdiction of the Bankruptcy

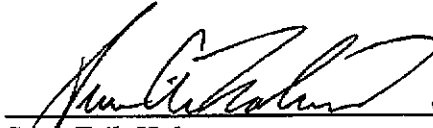
Court. The Court determined that Jones' primary authority in support of his motion to withdraw reference, Styler v. Jean Bob Inc. (In re Concept Clubs, Inc.), 154 B.R. 181 (D. Utah 1983) was not persuasive.

The Bankruptcy Court concluded in its November 7, 2000 memorandum opinion in the instant action that the Jones recommendation, which was adopted by this Court on July 26, 2000, set forth the analysis applicable to the Bartmanns motion to withdraw reference.¹ The Bankruptcy Court found it had "core" jurisdiction over CFS's breach of contract, turnover, and Section 502(d) claims as well as the Bartmanns' defenses to those claims. The Bankruptcy Court further found that the Bartmanns had waived their rights to trial by jury by asserting claims against the CFS estate. Accordingly, the Bankruptcy Court recommended this Court deny the Bartmanns' motion to withdraw the reference.

After a complete review of the record, and careful consideration of the recommendation of the Bankruptcy Court, the Court adopts the reasoning and conclusions of that recommendation and finds that the Bartmanns' assertions of setoff and indemnification as affirmative defenses are claims against the CFS estate and therefore constitute a waiver of the Bartmanns' right to a jury trial. Accordingly, the Court hereby denies Bartmanns' motion to withdraw reference.

IT IS SO ORDERED.

This 22ND day of December, 2000.


Sven Erik Holmes
United States District Judge

¹The Bankruptcy Court noted that, by virtue of the Bartmanns' assertion of claims against the CFS estate in the form of setoff and indemnification in their Answer, the posture of the Bartmann adversary proceeding was similar to the posture in the Jones adversary proceeding.